HON'BLE THE CHIEF JUSTICE SRI G.S. SINGHVI
AND
HON'BLE SRI JUSTICE C.V. NAGARJUNA REDDY

Writ Appeal No.381 of 2004

Between:

The Registrar, Nagarjuna University,
Guntur and another

… Appellants

And

Potharaju Venkata Phaneesh

… Respondent

::JUDGMENT::

Counsel for the appellants: Shri P. Harinath Gupta

Counsel for the respondent: Shri D. Linga Rao

August 28, 2007

Per G.S. Singhvi, CJ

This is an appeal for setting aside order dated 6.1.2004 passed by the learned Single Judge whereby he allowed the writ petition filed by the respondent and directed the appellants herein to award one grace mark to him in the subject of Data and File Structures and issue necessary Memorandum of Marks and Provisional Certificate etc.

Since the case has a chequered history, it will be useful to notice

the relevant facts. These are:

1) After acquiring the degree of Bachelor of Science, the respondent appeared in the entrance examination conducted by Nagarjuna University (for short, 'the University') for admission to M.C.A. course. On being declared successful, he was admitted in Hindu College, Guntur. In 1995, he appeared in five out of ten subjects of I M.C.A. examination. He secured 108 marks out of 150 in the paper of Computer Programming and Problem Solving, 106 out of 150 in Computer Organisation, 118 out of 150 in Business Data Processing, 38 out of 150 in Accountancy and Financial Management and 81 out of 150 in Data and File Structures. This shows that he secured more than 40% marks in four out of the five subjects, which were necessary for being declared "pass". He appeared in the supplementary examination held in July, 1996 in the remaining five subjects along with one paper in which he could not secure minimum 40 marks. This time he cleared all the subjects and was promoted to the II year. He appeared in all the ten subjects of II M.C.A. examination and passed in nine subjects. In the supplementary examination, he cleared the remaining subject. Thereafter, he was promoted to III year of the M.C.A. course. He successfully passed examination in three out of the four subjects of the III year. He passed the remaining subjects in the examination held in December, 1997. In May, 1998, he applied to the University for issue of Provisional Certificate, but his request was declined on the premise that he had failed to secure minimum 40 marks in one of the subjects of I year examination i.e. Data and File Structures. He challenged the decision of the

University in Writ Petition No.25018 of 1998. The University contested the writ petition by contending that for passing examination in any subject, the candidate is required to secure 75 marks (out of 150) including minimum 40 marks in external examination. After considering the rival pleadings, this Court disposed of the writ petition on 23.8.1998 with a direction to the petitioner to make representation to the University authorities for award of one grace mark in the paper of Data and File Structures with a further direction to the non-petitioners (the appellants herein) to sympathetically consider his representation. Accordingly, the respondent submitted application dated 14.9.1999 to the Vice-Chancellor of the University for award of one grace mark. The latter rejected the respondent's request on the ground that as per the extant rule, a candidate can be declared "pass" only if he secures minimum 40% in the external examination and he had not secured the required marks in the paper of Data and File Structures.

2) The respondent challenged the abovementioned decision in Writ Petition No.4212 of 2001, which was disposed of by the learned Single Judge on 5.3.2001. The operative part of that order reads as under:

> "This Court required the Vice-Chancellor to consider the request of the petitioner for awarding one grace mark in the paper Data & File Structures. In the communication dated 29.11.1999, there is no consideration of this aspect of the matter except saying that all other failed candidates appeared in the subsequent examinations to obtain special minimum marks in the theory papers. This, in the considered opinion of this Court, is not in accordance with the orders passed in the earlier writ petition being W.P.No.25018 of 1998. Though Mr.Deepak Mishra, learned counsel representing the

learned standing counsel for the University submits that there is no such provision to award grace marks, the same is not the reason for rejection of the request. The reason mentioned, by any standards, is irrelevant for considering the request as directed by this Court.

The writ petition is accordingly allowed and the matter is remitted to the Vice-Chancellor, Nagarjuna University to consider the request of the petitioner for awarding one grace mark as directed by this Court in W.P.No.25018 of 1998."

3) Notwithstanding the direction given by the Court for consideration of the respondent's case for award of one grace mark, the University again rejected his request vide letter dated 20.8.2002.

4) The repeat rejection of the respondent's request led to the filing of Writ Petition No.15805 of 2003. He relied on resolution dated 19.7.1994 passed by the Standing Committee of the Academic Senate of the University and pleaded that the respondents are bound to give him the benefit of one grace mark in accordance with that resolution. He further pleaded that the University's decision to decline his prayer for award of one grace mark is vindictive and arbitrary.

5) In the counter-affidavit filed on behalf of the University, it was averred that the petitioner's name was not included in the list of successful candidates, which was sent to Hindu College vide notification dated 30.1.1996 and that the petitioner cannot be treated to have passed the subject of Data and File Structures because he failed to secure minimum 40 marks in the theory paper.

The learned Single Judge noted that there is no separate column in the marks sheet indicating the marks secured by a candidate in the

external (theory) examination, but a star mark used to be put against the subject in which the candidate failed to secure the minimum marks, that the marks sheet issued to the petitioner did not contain any indication that he had failed to pass the examination in the subject of Data and File Structures and held that he cannot be deprived of the fruit of his labour after a gap of three years. The learned Single Judge rejected the plea put forward on behalf of the University that the writ petitioner is not entitled to the benefit of resolution dated 19.7.1994 passed by the Standing Committee of the Academic Senate by observing that his non-appearance in all the subjects of I M.C.A. examination has no bearing on his entitlement to get one grace mark. In the opinion of the learned Single Judge, the resolution passed by the Standing Committee of the Academic Senate is binding on the University and, therefore, the non-petitioners are duty bound to award one grace mark to the petitioner.

Shri P. Harinath Gupta, learned counsel for the appellants argued that even though the respondent may not have been individually informed about his failure to secure the minimum marks in the theory examination of the subject of Data and File Structures, he cannot be treated to have passed examination in that subject because the University Statute lays down that the candidate must secure 40 marks in the theory paper and the respondent could secure only 39 marks. Shri Gupta emphasized that in the notification sent to Hindu College on 30.1.1996, the respondent's name was not included in the list of successful candidates and argued that he cannot take advantage of the failure of the college to correctly inform him about the result of the examination. Learned counsel then submitted that

resolution dated 19.7.1994 passed by the Standing Committee is of no avail to the respondent because he had appeared only in five out of ten subjects of I M.C.A. examination.

We have given our most anxious consideration to the entire matter. There is no dispute between the parties that as per the extant University rule, a student could be declared "pass" in the examination of M.C.A. course only if he secured minimum 75 marks in the aggregate and minimum 40 marks in the theory examination. It is also not in dispute that the respondent secured 39 marks in the theory examination in the subject of Data and File Structures. However, no evidence has been produced before the Court to show that the respondent was ever informed that he has not been declared successful in that paper. If the University authorities had indicated to the respondent that he has failed to clear the subject of Data and File Structures, then he could have taken the supplementary examination in that paper along with the remaining subjects. However, on account of the failure of the University and college authorities to correctly inform him about the result of the paper of Data and File Structures, the respondent did not take supplementary examination in that subject. He appeared in the supplementary examination in one of the five subjects, which he could not clear in the first instance along with the remaining five papers. On successfully passing the examination, he was allowed to prosecute the II and III M.C.A. course and take the examinations. For the first time, the respondent was informed in May, 1998 that he had not cleared examination in the subject of Data and File Structures. It is, thus, evident that for a period of three years, the University authorities did not bother to inform the respondent that he

had not cleared the subject of Data and File Structures and now he cannot be expected to appear in the supplementary examination in one subject of

I M.C.A. course after having passed the examinations in all the subjects of II and III M.C.A. course.

We may now advert to resolution dated 19.7.1994 passed by the Standing Committee of the Academic Senate of the University. The extracts of the minutes of the meeting of that date, which contain the resolution, read as under:

MINUTES OF THE MEETING OF THE STANDING COMMITTEE TO ACADEMIC SENATE HELD AT 3.00 P.M. ON 19-7-1994 IN THE COMMITTEE ROOM OF THE ADMINISTRATIVE OFFICE: UNIVERSITY CAMPUS: NAGARJUNA NAGAR

MEMBERS PRESENT:

1. Prof. Y.C. Simhadri, Vice-Chancellor and Chairman (In chair)
2. Prof. D. Ramakotaiah, Dean, Faculty of Physical Sciences
3. Prof. P.L. Narasimha Rao, Dean, Faculty of Natural Sciences
4. Prof. B.R. Subrahmanyam, Dean, Faculty of Humanities
5. Prof. B. Vijayanarayana Reddy, Dean, Faculty of Law
6. Prof. Shaik Ismail, Registrar.

… … … …

6. Considered the issue of awarding uniform grace marks for all subjects and that is of the aggregate marks for all branches to be awarded as grace marks in all disciplines at UG and PG levels including professional courses to enable a candidate to obtain a pass mark on a high in class or 55% with effect from March-April, 1995 onwards.

Resolved to approve the following applicable to all P.G., U.G. and Professional courses:

a) Grace marks to the extent of one per cent be awarded taking into account the candidate marks for which the candidate is awarded.

b) The above rule is independently applicable to each year of examination for regular and supplementary candidates.

c) The rule is applicable only for considering for a pass, or 55% marks or for a higher class, as the case may be.

d) This comes into operation with immediate effect from the March – April, 1995 examinations that in the case of PG private study where it comes to operation w.e.f. the May 1994 examinations.

… … … …

A reading of the above reproduced resolution makes it clear that award of grace mark to the extent of 1% is not dependent on the number of papers in which the student may have appeared and failed. The resolution seeks to extend the benefit of 1% grace marks to all the students without any pre-condition. Therefore, refusal of the University authorities to give one grace mark to the respondent was ex facie unjust, arbitrary and discriminatory and resulted in violation of the respondent's fundamental right to equality guaranteed under Article 14 of the Constitution.

In the premise aforesaid, we hold that the learned Single Judge did not commit any error by declaring the decision of the University as arbitrary and the direction given by him to the appellants to award one grace mark to the respondent does not call for interference under Clause 15 of the Letters Patent.

No other point has been argued.

In the result, the appeal is dismissed. For compelling the respondent to litigate on the same issue for almost one decade, we direct the appellants to pay costs of Rs.2,500/- to the respondent.

As a sequel to dismissal of the appeal, WAMP No.737 of 2004 filed by the appellants for interim relief is also dismissed.

G.S. SINGHVI, CJ

August 28, 2007

C.V. NAGARJUNA REDDY, J

svs